

Service Date: July 17, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	UTILITY DIVISION
The Clark Fork and Blackfoot, LLC)	
For Certain Determinations Required by)	DOCKET NO. D2003.2.25
Subparagraph 32(c) of the Public Utility)	
Holding Company Act of 1935)	ORDER NO. 6497

FINAL ORDER

Background

On February 25, 2003 The Clark Fork and Blackfoot, LCL (CFB) filed an application with the Montana Public Service Commission (Commission) for certain "determinations" necessary for CFB "to become an exempt wholesale generator (EWG) and sell energy and capacity from the Milltown Dam hydroelectric facility ('Milltown') at market-based rates to the wholesale energy market." CFB is the owner and operator of the Milltown Dam hydroelectric facility near Missoula, Montana. CFB's sole member is NorthWestern Corporation (NOR), a public utility operating in Montana.

The CFB application was filed pursuant to requirements of federal law. CFB describes the requirements as follows: "In order for [CFB's] parent, NOR, to avoid being subject to regulation by the Securities and Exchange Commission as a 'registered holding company' under the 1935 [Public Utility Holding Company] Act, [CFB] must file an application with FERC [Federal Energy Regulatory Commission] to become an 'exempt wholesale generator' ('EWG'). [CFB] has not yet applied for EWG status because, under Paragraph 32(c) [15 U.S.C. § 79z-5a(c)], the Commission must make a separate finding because the Milltown facility was formerly regulated by the Commission. The relevant provision is as follows:

If a rate or charge for . . . electric energy produced by a facility . . . was in effect under the laws of any State as of the date of enactment of this section, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit

consumers, (2) is in the public interest, and (3) does not violate State law"

CFB contends the Commission should make the determinations identified in federal law.

On March 17, 2003, the Commission issued a Notice of Application, Notice of Opportunity to Comment or Request Public Hearing. No requests for hearing or comments opposing the CFB application were received in response to the Notice. CFB copied the Commission with a letter to Dennis Lopach (CFB) from Brian Morris of the Montana Attorney General's office, indicating that the Attorney General "has no intention to oppose the application." The Commission staff issued two sets of data requests on the application, on April 16 and May 9, 2003. CFB responded to the data requests on April 29 and May 22, 2003, respectively. The Commission reviews CFB's application based on the filing and the data responses.

Discussion and Decision

CFB contends that allowing it to become an EWG "will benefit consumers." The basis for this contention is that operating the generators at the Milltown Dam will make additional generating capacity available for sale in the competitive markets, "increasing the liquidity of the wholesale power market within Montana." (The generation capacity of Milltown Dam is approximately 2 megawatts.) CFB asserts that the Commission and the Montana Legislature have recognized the benefit of a competitive generation market in Montana, and that "[a]s the competitive wholesale market increases, it is expected to function more efficiently than the rate-regulated system of generation, with consumers likely to benefit through lower prices."

CFB also contends that allowing it to become an EWG "is in the public interest." In support CFB makes two points: first, that EWG status "supports Montana's statutory goals of eliminating the vertical integration of the electric utility industry" and making generation competitive; second, EWG status will allow CFB to gain revenues from the facility to offset operating costs during a "remediation plan" period that may lead to removal of the dam.

Finally, CFB asserts that EWG status for the Milltown Dam "does not violate state law." CFB claims that the proposed sale of Milltown generation output "is completely consistent with"

§§ 69-8-101, et seq., MCA, the Electric Utility Industry Restructuring and Customer Choice Act.

Based on the facts presented by CFB in its application, and the data responses provided, the Commission will make the requested determinations. Additionally, while the lack of objection to or comment on the application is not dispositive here, nor will it be in a future EWG application, it is noteworthy and a factor in the decision.

If a “specific determination” of consumer benefit requires a precise quantification of such benefit, then the CFB application would fail. It may be that in other contexts an EWG application would be required to make a more specific showing of consumer benefit. The Commission is satisfied in this case, however, that there is some theoretical consumer benefit to making even a small amount of incremental power available to the wholesale market in Montana; and, moreover, it is difficult to conceive of a consumer detriment to such availability.

The Commission finds similarly with respect to a determination of public interest. Having a small amount of additional power available in the Montana wholesale market is in the public interest. Also, it is in the public interest in this context that CFB and NOR acquire revenue from a standing-ready facility, rather than that facility remain idle.

Finally, allowing Milltown Dam to be an EWG does not violate Montana law. The determinations made herein are based on the specific factual context of the Milltown Dam, and should not be considered precedent, nor will the Commission consider them precedent, for any other application asking the Commission to make similar determinations under federal law.

Conclusions of Law

The Commission has jurisdiction over the CFB application pursuant to 15 U.S.C. § 79z-5a(c), and relevant sections of Title 69, MCA.

Order

The Commission finds that allowing the Milltown Dam to be an eligible facility will benefit consumers, is in the public interest, and does not violate Montana law.

DONE IN OPEN SESSION at Helena, Montana, this 15th day of July, 2003, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

TOM SCHNEIDER, Vice Chairman

GREG JERGSON, Commissioner

MATT BRAINARD, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Barbara J. Effing
Acting Commission Secretary

(SEAL)

Note: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.